

GOLD LEAF ENTERPRIZES

IBLA 88-324

Decided November 7, 1988

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring unpatented lode mining claims A MC 189344 through A MC 189346 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Where an annual filing document has been submitted to an office not authorized to receive it, the filing requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 USC § 1744 (1982), have not been complied with. As a claimant is responsible to comply with the statute and the Department is without authority to excuse lack of compliance, the failure of an office receiving a misdirected filing to promptly notify the claimant of the situation does not waive the statutory consequences for failure to timely file the required document in the proper office.

APPEARANCES: Michael O'Toole for Gold Leaf Enterprizes.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Gold Leaf Enterprizes appeals from a March 14, 1988, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring unpatented lode mining claims A MC 189344 through A MC 189346 abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claims with BLM on or before December 30, 1987. A copy of the affidavit of labor was received on January 7, 1988, in an envelope postmarked January 5, 1988.

In its statement of reasons, appellant asserts that it has not abandoned the subject mining claims. Appellant explains that it sent the annual filing early enough but to the wrong BLM office. The record indicates the annual filing in question was received by the Kingman, Arizona, Resource Area Office, BLM, on or before December 31, 1987. Appellant mailed its annual filing to the Arizona State Office, BLM, only after it was notified that it had filed in the wrong office.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year. Failure to file one of the two instruments within the pre-scribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4. Pursuant to Departmental regulation 43 CFR 3833.0-5(m), "timely filed" means the required document was received by January 19 following the calendar year for which the document is filed, provided the envelope containing the document bears a clearly dated postmark affixed by the U.S. Postal Service on or before December 30 of the subject year. As the envelope containing the annual filing for the subject claims, received after the end of the filing period, was not postmarked on or before December 30, 1987, BLM properly deemed the claims to be abandoned and void. Alice R. Kirk, 88 IBLA 4 (1985); Paul E. Hammond, 87 IBLA 139 (1985); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[1] Congress mandated that failure to file the proper documents in the "office of the Bureau designated by the Secretary" within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. 43 U.S.C. | 1744 (1982). A claim for which timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). Departmental regulations stipulate that the proper BLM office for filing annual recordation documents for mining claims situated in Arizona is the Arizona State Office, BLM, in Phoenix, Arizona. See 43 CFR 3833.0-5(g), 1821.2-1(d). Where the annual filing is submitted to a BLM office not authorized to receive it, the filing requirements have not been complied with. See John Lovelady, 68 IBLA 245 (1982).

It is unfortunate in the instant case that appellant sent the required document to the Kingman Resource Area Office, BLM. ^{1/} Regardless, the Kingman office cannot be held accountable for the late filing as a claimant is solely responsible for complying with the recordation requirements of FLPMA with or without the benefit of notice or instructions from the Department. As the statute is self-operative, the subject mining claims must be deemed abandoned when the annual filing was not timely received in the proper office. See, e.g., Ptarmigan Co., 91 IBLA 113 (1986). Congress did not grant this Department the authority to waive or stay the statutory consequences of the failure to comply. Thus, the Board is without authority to consider special facts or problems or provide relief in view of mitigating circumstances. See Lynn Keith, *supra* at 196, 88 I.D. at 372. Where an annual filing is not timely received in the proper office, for whatever reason, the consequence must be borne by the claimant.

^{1/} It is regrettable that the Kingman Office may not have promptly notified the claimant that its filing was sent to the wrong office. The record suggests the filing was sent on Dec. 16, 1987, and received by the Kingman Office shortly thereafter. (There is no record of the date the subject document was actually received by the Kingman Office.) That office, knowing that it is not a proper office for the filing of FLPMA documents, apparently had sufficient time to notice the incorrect filing and notify the claimant before the end of the filing period, but failed to do so.

The purpose of section 314 is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive pre- sumption of abandonment embodied in the statute. As appellant has not demonstrated that an annual filing was received in the proper BLM office within the period allowed for filing, mining claims A MC 189344 through A MC 189346 are properly deemed to be abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

James L. Burski
Administrative Judge